Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Gregory Manasher et al.	)	CG Docket No. 98-170
Petition for Declaratory Ruling	)	
	)	

DECLARATORY RULING

Adopted: March 13, 2018 **Released: March 15, 2018**

By the Commission: Commissioner O'Rielly approving in part, dissenting in part, and issuing a statement.

I. INTRODUCTION

1. With this order, we respond to eight questions posed by a federal district court related to a telecommunications carrier's bill descriptions and whether they violate the Commission's Truth-in-Billing rules and Section 201(b) of the Communications Act of 1934, as amended (the Act).[1] We find that vague charge descriptions on a bill may violate the rules and the Act, but emphasize that a final determination will require the court to apply our ruling to the facts at issue in the case.

II. BACKGROUND

A. The Truth-in-Billing Rules

2. In 1999, the Commission adopted Truth-in-Billing rules in response to growing consumer confusion related to billing for telecommunications service, and in response to an increase in the number of entities willing to take advantage of this confusion.[2] The statutory authority for the rules is Section 201(b) of the Act, which prohibits unjust and unreasonable practices by telecommunications carriers,[3] and Section 258, which prohibits slamming, *i.e.*, switches in carriers without following Commission-

[1] *See Gregory Manasher and Frida Sirota, Plaintiffs, v. NECC Telecom, Defendant,* Opinion & Order Certifying Questions to the FCC, Case No. 2:06-cv-10749, 2010 WL 1416974 (E.D. Mich. April 8, 2010) (*Manasher Opinion and Order*). The court's questions have been presented to us in a petition for declaratory ruling jointly filed by the parties to the litigation. *See* Gregory Manasher et al., Petition for Declaratory Ruling, CG Docket No. 98-170, filed July 13, 2010 (*Petition*) attached to *Consumer and Governmental Affairs Bureau Seeks Comment On Petition For Declaratory Ruling of Gregory Manasher, et al. On Applicability of the Communications Act and Commission Rules Regarding Truth-In-Billing*, Public Notice, 27 FCC Rcd 13010 (CGB 2012) (*Public Notice*).

[2] *See Truth-in-Billing and Billing Format,* First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492 (1999) (*Truth-in-Billing Order).*

[3] *Id.* Section 201(b) requires that common carriers' "practices . . . for and in connection with . . . communications service, shall be just and reasonable, and any such . . . practice . . . that is unjust or unreasonable is hereby declared to be unlawful . . . ." 47 U.S.C. § 201(b). The *Truth-in-Billing Order* noted that "the Supreme Court has ruled that Section 201(b) provides the Commission with authority to implement all of the provisions of the Act, including those that apply to intrastate communications." *Truth-in-Billing Order*, 14 FCC Rcd at 7503-04, para. 21; *see also AT&T Corp. v. Iowa Utils. Bd.*, 119 U.S. 721 (1999).

prescribed procedures to verify the consumer's choice in carriers.[4] In promulgating the Truth-in-Billing rules, the Commission sought "to define more specifically what would constitute a violation of Section 201 in the billing context for the covered carriers"[5] to help consumers identify potentially erroneous charges.

3. Section 64.2401(b) of the Truth-in-Billing rules requires that charges contained on telephone bills be "accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered."[6] In responding to the court's questions, we think it important to highlight the approach adopted by the Commission in adopting these rules. That approach was to adopt "broad, binding principles to promote truth-in-billing, rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices."[7] It "reflects a recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner."[8]

4. To ensure full (and non-misleading) descriptions of the service charges that appear on the bill, the Commission required that the services included on the bill must be accompanied by "a brief, clear, plain language description of the services rendered."[9] The Commission singled out for criticism charges identified simply as "monthly fee" or "basic access," or "miscellaneous" charges, without further explanation.[10] The goal is to require sufficient clarity "to enable a customer reasonably to identify and to understand the service for which the customer is being charged."[11] The Commission noted that "clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices."[12]

B. The Petition

5. The *Petition* arises from litigation before the United States District Court for the Eastern District of Michigan, *Manasher et al. v. NECC Telecom*.[13] Gregory Manasher and Frida Sirota (collectively, "Plaintiffs") alleged that NECC Telecom (NECC) violated Section 64.2401 and Section 201(b) by billing, charging, and collecting monies from Plaintiffs which were unjustly, unreasonably, and deceptively billed as "recurring fees" and "other fees."[14] The Plaintiffs also alleged that NECC billed Plaintiffs "for amounts in excess of the actual cost for telephone services."[15]

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[4] *Id*. at 7503-04, para. 21. Section 258(a) makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. § 258(a).

[5] *Truth in Billing Order*, 15 FCC Rcd at 7506, para. 24.

[6] 47 CFR § 64.2401(b).

[7] *Truth in Billing Order*, 14 FCC Rcd at 7498, para 9.

[8] *Id.* at 7499, para. 10.

[9] *Id.* at 7516, para. 38.

[10] *Id.* at 7517-18, paras. 40-41.

[11] *Id.* at 7517-18, para. 40.

[12] *Id.* at 7516, para. 37.

[13] *Gregory Manasher and Frida Sirota, Plaintiffs, v. NECC Telecom, Defendant*, Motion for Leave to File a First amended Complaint, Case No. 2:06-cv-10749 (E.D. Mich. Oct. 31, 2006) (First Amended Complaint).

[14] *Id.* at para. 39.

[15] *Id*. at para. 40.

6. NECC disagreed, and argued that a violation of Section 64.2401 does not necessarily constitute a violation of Section 201(b).[16] Both parties addressed *Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.,* in which the Supreme Court held that a violation of a regulation that lawfully implements Section 201(b)'s requirements is also necessarily a violation of Section 201(b) itself.[17] NECC asserted that "unlike the post-rulemaking decision relied on by the Supreme Court in *Global Crossing,* the FCC has not made an unequivocal ruling that a violation of Section 64.2401 is unreasonable under Section 201(b)."[18] Plaintiffs argued that the Commission did in fact make such a ruling, citing the Commission's statement that "a carrier's provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of Section 201(b) of the Act."[19]

7. The court found that the Commission had not yet ruled on whether a violation of Section 64.2401 is unreasonable for purposes of Section 201(b)[20] and referred questions on Truth-in-Billing practices to the Commission for consideration under the doctrine of primary jurisdiction.[21] The court emphasized that it was not asking the Commission to make factual findings.[22] Manasher, Sirota, and NECC then jointly filed the *Petition* seeking a declaratory ruling on whether the billing practices identified by the court violate the Commission's Truth-in-Billing rules and, if so, whether these practices also violate Section 201(b).

8. According to the *Petition,* the court asked these eight questions:[23]

> 1. "To the extent that billing information is deemed to be unclear, rather than misleading or deceptive, under 47 C.F.R. §64.2401(b), would such a violation of 47C.F.R. §64.2401(b) also violate 47 U.S.C. §201(b)?"
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> 2. "Does listing charges on a phone bill without also providing an accompanying description of what those charges are: a. Violate 47 C.F.R, §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"
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> 3. "Does listing a charge for a 'recurring fee' without providing an explanation on the bill as to what a 'recurring' fee is: a. Violate 47 C.F.R. §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"

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[16] *Gregory Manasher and Frida Sirota, Plaintiffs, v. NECC Telecom, Defendant,* Order Denying Plaintiff's Motion for Modification of the Court's Order Dated September 18, 2007, Case No. 2:06-cv-10749, 2008 WL 2622956 at *2 (E.D. Mich. July 2, 2008) (*Manasher Order*).

[17] *Id.* at *3*; see also Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 45 (2007) (*Global Crossing*).

[18] *Manasher Order* at *15.

[19] *Id*. (citing *Truth-in-Billing Order*, 14 FCC Rcd at 7506, para. 24).

[20] *Id*.

[21] *Id.* at *16.

[22] *Id.* at *4.

[23] *Petition* at 2-5.

4. "Does charging $4.99 for what is called a 'recurring fee' (without a description) for being late and a 1.5% charge which is called a 'late fee': a. Violate 47 C.F.R. §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"

5. "Does charging $4.99 for what is called a 'recurring fee' (without a description) for receiving a special rate: a. Violate 47 C.F.R. §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"

6. "Does listing a charge for 'other fees' without providing an explanation on the bill as to what 'other fees' are: a. Violate 47 C.F.R. §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"

7. "Does the improper charging and collection of a late fee without refunding the late fee after discovery of the error unless a customer requested a refund: a. Violate 47 C.F.R. §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"

8. "Does the incorrect tallying of monthly charges (the amount billed to the customer is greater than the tally of the individual charges): a. Violate 47 C.F.R. §64.2401(b)? i. If so, would this violation constitute the provision of: (1) misleading billing information and/or; (2) deceptive billing information and/or; (3) unclear billing information? ii. If so, and if this violation constitutes only unclear – but not also misleading or deceptive – billing information, would this violation also violate 47 U.S.C. §201(b)?"

9. On October 16, 2012, the Consumer and Governmental Affairs Bureau sought comment on the *Petition*.[24] Three comments were filed. The National Association of State Utility Consumer Advocates (NASUCA) stated that "there is nothing more violative of the concept of Truth-in-Billing than the placement of charges on consumer bills with descriptions so vague that consumers cannot ascertain what the billings are for or whether the billings were authorized and hence owing."[25] While the Independent Telephone and Telecommunications Alliance (ITTA) acknowledged the Truth-in-Billing rules' objective to ensure bill clarity for consumers, it emphasized the need to recognize carrier flexibility and discretion in achieving compliance.[26] United States Telecom Association (USTelecom), on the other hand, argued that bills for telecommunications services can vary in bill formats and presentations, including length, names of charges, order of charges, and level of detail. USTelecom argues that it would be premature to answer the *Petition's* questions absent facts such as contractual agreements between the parties (which may explicate terms used on the bill face), the bill format, information provided by the

[24] *See Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling of Gregory Manasher, et al. on Applicability of the Communications Act and Commission Rules Regarding Truth-in-Billing,* CG Docket No. 98-170, Public Notice, 27 FCC Rcd 13010 (2012) (*Public Notice*).

[25] NASUCA Comments at 2.

[26] ITTA Comments at 2, 4.

carrier outside the bill, and context.[27] Plaintiffs argue that "violations of the truth-in-billing rules due to unclear information are . . . violations of Section 201(b) of the Act." They also argue that USTelecom's comments related to factors and context are not responsive to the Commission's *Public Notice,* in light of the court's statement that it was not asking the Commission to make factual findings pertinent to the case.[28]

III. DISCUSSION

10. Below we answer each of the court's questions in turn, as the *Petition* presents them. As a result, we have not applied the answers to any specific set of facts.

A. Question One

11. We find that billing information that is unclear, rather than misleading or deceptive, under Section 64.2401(b) also violates Section 201(b). The Commission's Truth-in-Billing requirements, including Section 64.2401(b), were established "to define more specifically what would constitute a violation of Section 201 in the billing context for the covered carriers."[29] As the Commission also stated, "[P]roviding clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices."[30] The reference to the obligation of "reasonable charges and practices" was to the language of Section 201(b).[31]

12. Our view is consistent with the Supreme Court's decision in *Global Crossing*. In *Global Crossing*, the Supreme Court held that "to violate a regulation that lawfully implements Section 201(b)'s requirements is to violate the statute."[32]

B. Question Two

13. We clarify that listing charges on a bill with no accompanying description violates Section 64.2401(b) and thus Section 201(b), except where context and the mere name of the charge makes its nature so obvious to the consumer that no description is necessary.[33] As noted above, Section 64.2401(b) requires that telephone bills contain a brief, clear, non-misleading, plain language description of services, and that the bill content is sufficiently clear in scope for a reasonable consumer to understand.[34] Section 64.2401(b) therefore clearly requires that a consumer's monthly bill contain descriptions of all billed charges so consumers are fully informed about the basis of the charges.[35] The Commission's rule is designed to ensure that the billing information provides customers with information sufficient to allow them to accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the cost assessed for those services conform to their understanding of the price charged.[36] As stated above, if the charge violates Section 64.2401(b), it violates Section 201(b) as well.

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[27] USTelecom Reply Comments at 3.

[28] Plaintiffs' Reply Comments at 2-3.

[29] *Truth-in-Billing Order,* 14 FCC Rcd at 7506, para. 24.

[30] *Id.* at 7516, para. 37.

[31] *See* note 3 *supra.*

[32] *Global Crossing*, 550 U.S. at 54.

[33] *See infra* para. 16.

[34] *See* 47 CFR § 64.2401(b).

[35] *See, e.g., Empowering Consumers To Prevent and Detect Billing For Unauthorized Charges ("Cramming") et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4474, para. 106 (2012) (Truth-in-Billing rules "are sufficiently broad to encompass all charges that appear on a telephone bill . . . . ").

[36] 47 CFR § 64.2401(b).

C. Question Three

14. We find that a charge labeled "recurring fee" without additional description or clarifying context violates the rules and Section 201(b), even if non-misleading. When the Commission adopted Section 64.2401(b), it expressed concern about complaints from consumers who alleged that they often paid unauthorized recurring charges for several months before realizing the questionable nature of such charges.[37] The Commission indicated its concern with charges identified on local telephone bills simply as "monthly fee" without further explanation.[38] We find "recurring fee," absent additional description or clarifying context, is similarly confusing and so unclear as to not provide consumers the ability to detect billing errors because such a charge is not specific enough without further description or clarifying context to ensure that the customer can reasonably understand the reason for the charge and whether it is consistent with the service they received.

15. As noted above, the Commission determined in adopting its Truth-in-Billing rules to adopt broad, binding principles and not to mandate detailed rules that would rigidly govern the details or format of carrier bills. This approach reflects a recognition that "there are typically many ways to convey important information to consumers in a clear and accurate manner."[39] Thus, we emphasize that the context of such a charge would inform our analysis. For example, if a "recurring fee" were the *only* charge to appear on a customer's monthly phone bill, we would be more likely to find that label clear, whereas if such a charge appeared on a bill with other fees that also recur from one bill to the next, we would be more likely to find it unclear.

D. Question Four

16. We find that a 1.5% charge labelled "late fee" that lacks any additional description does not violate Section 64.2401(b) or Section 201(b). "Late fee" is sufficiently clear and non-misleading that it does not require additional description. In the *Truth-in-Billing Order*, the Commission noted that while "carriers must provide sufficient information . . . full descriptions do not mean redundant or unnecessary explanations."[40] The Commission further stated that carriers need not define those terms that are already generally understood by consumers, such as "long distance service."[41] We believe that the general reference to a "late fee" in this case similarly is sufficiently understood by consumers to not require additional description.

17. By contrast, we find that a $4.99 charge labelled "recurring fee" that is imposed "for being late" without additional explanation or clarifying context is inherently misleading and unclear and thus violates the Truth-in-Billing rules and thus Section 201(b).

E. Question Five

18. Similar to our answer to Question Three above, a $4.99 charge for receiving a special rate simply labeled "recurring fee" without additional description or clarifying context is unclear and violates the Truth-in-Billing rules and Section 201(b). As we found with Question Three above, a charge labeled simply "recurring fee" without additional explanation or clarifying context – which here is $4.99 for receiving a "special rate" – is unclear, even if it is not misleading in that it could occur from bill-to-bill. And, as we have found above, any such violation of the Truth-in-Billing rules would also violate Section 201(b).

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[37] *See Truth-in-Billing Order*, 14 FCC Rcd at 7514, para. 34.

[38] *See id*. at 7517, para. 39 ("many complaints we have received involve charges identified on local telephone bills simply as 'monthly fee' or 'basic access,' without further explanation").

[39] *Id.* at 7499, para. 10.

[40] *Truth-in-Billing Order*, 14 FCC Rcd at 7518, para. 41.

[41] *Id.*

19. We again emphasize that the context of such a charge (*e.g.*, whether and how the consumer is informed of the nature of any such "special rate") would inform our analysis. As noted above, if such a "recurring fee" charge appeared on a bill with other fees that also recur from one bill to the next, we would be more likely to find it unclear.

F. Question Six

20. We find that labeling a charge as "other fees" without additional explanation or clarifying context is unclear and violates the Truth-in-Billing rules and Section 201(b). As with our answers to Questions Three and Five above, we find that "other fees" is so unclear in description that the customers cannot reasonably be expected to understand the reason for the charge and whether it is consistent with the service they received absent additional explanation or clarifying context.

21. We emphasize that the context of such a charge would inform our analysis. For example, if such a charge appeared on a bill with additional fees similarly labeled with broad descriptions like "other fees," we would be more likely to find it unclear in description.

G. Question Seven

22. The Truth-in-Billing rules focus on the format and clarity of a consumer bill, and do not reach the actual bill charge.[42] Thus, charging and collecting a late fee without refunding the late fee after discovery of the error does not violate the Truth-in-Billing rules.[43] We have not been asked, and do not determine, whether or when such a practice may violate any other Commission rule or provision of the Act.[44]

H. Question Eight

23. For similar reasons, incorrect tallying of monthly charges so that the billed amount is greater than the individual charges does not violate our Truth-in-Billing rules,[45] which focus on bill format and clarity. While such a bill might be confusing because of calculation discrepancies, the customer would be in a position to read the bill and obtain clarification of the error from the carrier, and thereby to have been provided enough information so as to reasonably identify and understand the service being charged. We have not been asked, and do not determine, whether or when such a practice may violate any other Commission rule or provision of the Act.[46]

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[42] *Id.* at 7496, para. 4 (noting that the truth-in-billing rules are intended to ensure "that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers" and "contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill"). The only exception to this principle, not relevant here, is that universal service charges and regulatory fees for which the Commission has indicated it is unreasonable and misleading to collect amounts that exceed any caps on those charges. *See Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, 20 FCC Rcd 6448, 6461-62, paras. 28-29 (2005).

[43] *Petition* at 4.

[44] However, we note that other provisions of the Act and the Commission's rules may apply to this set of facts. For example, section 201 of the Act requires all telecommunications carrier "charges" to be "just and reasonable." 47 U.S.C. § 201.

[45] *Id.* at 4-5.

[46] However, we note that other provisions of the Act and the Commission's rules may apply to this set of facts. For example, section 201 of the Act requires all telecommunications carrier "charges" to be "just and reasonable." 47 U.S.C. § 201.

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 201(b), and sections 1.2 and 64.2401(b) of the Commission's rules, 47 CFR §§ 1.2, 64.2401(b), that the Petition for Declaratory Ruling filed by Gregory Manasher et al. in CG Docket No. 98-170 on July 13, 2010, IS GRANTED to the extent set forth herein and IS OTHERWISE DENIED.

25. IT IS FURTHER ORDERED that this Declaratory Ruling shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

The following parties filed comments in response to the October 16, 2012, Public Notice (CG Docket 98-170):

Commenter	Abbreviation
The Independent Telephone & Telecommunications Alliance	ITTA
National Association of State Utility Consumer Advocates	NASUCA
United States Telecom Association	USTelecom

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

Re: *Gregory Manasher et al. Petition for Declaratory Ruling*, CG Docket No. 98-170.

When the Commission approved the 1999 Truth-in-Billing Order, it repeatedly emphasized that it chose to "adopt broad, binding principles to promote truth-in-billing, rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices" because the agency wanted to "allow carriers considerable discretion to satisfy their obligations."[1] Indeed, the Commission "envision[ed] that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers."[2] These often serve as ways providers use to differentiate themselves from their competitors.

While protecting consumers from unscrupulous providers seeking to permeate confusion or downright deception remains a key obligation of the Commission, I am concerned that the Declaratory Ruling, issued on the basis of a 2006 court challenge and a record that concluded in 2012, could now be read to limit the scope of intentional truth-in-billing discretion. As the item acknowledges, commenters emphasized the need to retain carrier discretion and noted that charges that might appear to lack context on the face of the bill may actually be clear when read in conjunction with the other materials, including the contract or other information provided apart from the bill itself. Therefore, I disagree with the portions of this item that suggest that clarifying information must be contained on the bill itself. These same commenters also expressed concerns, which I see some merit in, about broadly answering questions about billing practices that are, by their very nature, fact-specific.

I am also troubled that we take this action, which understandably only applies to traditional common carrier voice providers, against the backdrop of a flourishing voice market. If consumers are unhappy with the level of detail contained on their traditional voice telephone bills, the market has responded by providing a number of other options to choose from, many of which offer advanced technological capabilities. In the presence of this reality this item should strike a more careful balance. Instead, its effort to explicitly or implicitly constrain billing practices could make compliance more burdensome for providers of legacy services or confuse consumers with more billing detail than helpful.

[1] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492, paras. 6, 9 (1999).

[2] *Id.* at para. 9.